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RECENT DECISIONS

COMMON LAW MARRIAGE—EVIDENCE—PROOF IN CIVIL AND CRIMINAL CASES.—The defendant was indicted for fornication and pleaded a common law marriage between himself and the woman with whom he was alleged to have committed the crime; but, previous to the finding of the indictment, married another woman. The defendant and the first woman agreed to live as if husband and wife, both parties holding themselves out to friends and neighbors as such, but for the purpose of concealing their illicit relations. *Held*, the defendant is guilty of fornication. *Nye v. State* (Tex. Cr. App.), 179 S. W. 100.

In a majority of the states, unless expressly prohibited by statute, a present agreement between competent parties to be husband and wife constitutes a valid marriage, even though not in the presence of witnesses. *Meister v. Moore*, 96 U. S. 76; *Renfrow v. Renfrow*, 60 Kans. 277, 56 Pac. 534, 72 Am. St. Rep. 350. But the parties must consent to such marriage as is sanctioned or defined by law, consent to mere immoral relations being insufficient. *McKenna v. McKenna*, 180 Ill. 577, 54 N. E. 641. And an agreement to cohabit as husband and wife, but subject to dissolution by the will of either party, does not constitute marriage, for marriage is a permanent relation. *Schwingle v. Kiefer*, 105 Tex. 609, 153 S. W. 1132.

The presumption of marriage, however, when once raised, is one of the strongest known to the law, and can only be overcome by clear and satisfactory evidence. *Hynes v. McDermott*, 91 N. Y. 451, 43 Am. Rep. 677. The presumption in civil cases may be established by circumstantial evidence, direct proof being unnecessary. *Travers v. Reinhardt*, 205 U. S. 423. Cohabitation and repute, if shown to coexist, will raise this presumption, but not alone will not suffice. *Klipfel's Estate v. Klipfel*, 41 Colo. 40, 92 Pac. 26, 124 Am. St. Rep. 96.

But the above rule does not apply where the result of proving the marriage would establish the criminal guilt of one of the parties. In such cases direct proof of the marriage is necessary. *State v. Hodgskin*, 19 Me. 155, 36 Am. Dec. 742, and note; *Brown v. State*, 52 Ala. 338. See *Jones v. Jones*, 48 Md. 391, 30 Am. Rep. 466. As to what constitutes direct proof the authorities are agreed that the records, or the testimony of witnesses present are sufficient. *Commonwealth v. Hayden*, 163 Mass. 453, 40 N. E. 846, 47 Am. St. Rep. 468, 28 L. R. A. 318; *State v. Kean*, 10 N. H. 347, 34 Am. Dec. 162. And it is also well settled that admissions and confessions of the defendant are considered as direct proof. See *Miles v. United States*, 103 U. S. 304; *Schweitzer v. State*, 57 Conn. 532, 18 Atl. 787, 6 L. R. A. 125. As to whether declarations of the defendant, coupled with cohabitation and repute are such direct proof as would establish the marriage, there is some conflict, one view being that such proof is insufficient for a conviction. *Hiler v. People*, 156 Ill. 511, 41 N. E. 181, 47 Am. St. Rep. 221. The better view, however, is that such proof is sufficient, if believed by the jury. *Common-*

wealth v. Jackson, 11 Bush. (Ky.) 679, 21 Am. Rep. 225; *Dumas v. State*, 14 Tex. Cr. App. 464, 46 Am. Rep. 241.

CONDITIONAL SALES—GOODS SOLD TO RETAILER TO BE RESOLD IN REGULAR COURSE OF BUSINESS—BONA FIDE PURCHASERS.—The plaintiff sold certain goods to a dealer in general merchandise and, under a conditional sales contract, reserved title to the goods in himself until paid for. The retailer gave a chattel mortgage on his stock, including the goods sold by plaintiff to his creditors to secure their claims. *Held*, plaintiff can recover the goods. *Mishawaka Woolen Mfg. Co. v. Stanton* (Mich.), 154 N. W. 48. See NOTES, p. 393.

CONFLICT OF LAWS—PENAL STATUTES—CONSTRUCTION BY COURTS OF FORUM.—A Massachusetts statute provided that where a corporation by its negligence causes the death of a person who is in the exercise of due care, it shall be liable in damages to the executor or administrator of the deceased in the sum of not less than \$500, nor more than \$10,000, to be assessed with reference to the degree of the culpability of the corporation or its agents. The defendant corporation caused the death of the intestate in Massachusetts and the plaintiff as administrator of the deceased, brought an action in New York against the defendant under the above Massachusetts statute, which statute had been construed as penal by the courts of Massachusetts. *Held*, the action may be maintained, since the statute is not penal in the sense such term is used in private international law. *Loucks v. Standard Oil Co. of N. Y.*, 156 N. Y. Supp. 7.

Where a right of action is created by a purely remedial statute, it is transitory and may be enforced in another state, provided it is not contrary to the laws of the latter state. *Leonard v. Columbia, etc., Co.*, 84 N. Y. 48, 38 Am. Rep. 491; *Wooden v. Western New York, etc., R. Co.*, 126 N. Y. 10, 26 N. E. 1050; *Nelson v. Chesapeake & Ohio R. Co.*, 88 Va. 971, 14 S. E. 838, 15 L. R. A. 583, and note. But the courts of one state do not enforce the penal laws of another state. *Nat. Bank v. Price*, 33 Md. 487, 3 Am. Rep. 204; *Dale v. Atchison, etc., R. Co.*, 57 Kan. 601, 47 Pac. 521; MINOR, CONFLICT OF LAWS, § 10. And by the better view, any law whose purpose is not merely to compensate the plaintiff for damage suffered, but to impose an additional burden upon the wrongdoer by way of a punishment, is to that extent penal. *Matheson v. Kansas City, etc., R. Co.*, 61 Kan. 667, 60 Pac. 747; *Raisor v. Chicago, etc., R. Co.*, 215 Ill. 47, 74 N. E. 69; *Langdon v. New York, etc., R. Co.*, 58 Hun (N. Y.) 122, 11 N. Y. Supp. 514. See MINOR, CONFLICT OF LAWS, § 10. The statute in the principal case, therefore, would clearly seem to be a penal one in the proper sense of the term, since the amount recoverable is arbitrarily fixed between certain limits, regardless of the actual damage suffered by the plaintiff. *Christilly v. Warner*, 87 Conn. 461, 88 Atl. 711; *Adams v. Railroad Co.*, 67 Vt. 76, 30 Atl. 687; *Dale v. Atchison, etc., R. Co.*, *supra*; *Matheson v. Kansas City, etc., R. Co.*, *supra*.

The courts of the forum will give, in general, to the statute of a foreign state the same meaning as that adopted by the courts of that